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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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23 <i>In re Synocor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008).....	3
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27 **Rules and Statutes**

28 15 U.S.C. 1681, <i>et seq.</i> .....	<i>passim</i>
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1 Fed. R. Civ. P. 23.....3

2 **Other Authority**

3 Newberg on Class Actions § 11.41 (4th ed. 2006).....3

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1 **I. INTRODUCTION.**

2 Through this unopposed motion, Plaintiff Andres Regalado (“Plaintiff”)  
3 seeks the Court’s final approval of the Amended Settlement Agreement that the  
4 Court previously approved in its preliminary approval order (*ECF No. 67*). The  
5 Class Members reacted well to the settlement; not a single Class Member opted out  
6 of or objected to the settlement. The Amended Settlement Agreement satisfies all  
7 criteria for final approval of a class action settlement in the Ninth Circuit. Plaintiff  
8 therefore respectfully requests that the Court grant Plaintiff’s request for final  
9 approval of the class action settlement.

10 **II. BACKGROUND.**

11 The relevant background relating to the history of this lawsuit and the  
12 negotiation and terms of the Settlement Agreement is addressed in detail in the  
13 Plaintiff’s Renewed Motion for Preliminary Approval. *See ECF No. 62 at 1-7*.  
14 Among other things, Plaintiff’s preliminary approval motion papers address:

15 • The allegations in Plaintiff’s Third Amended Complaint and requesting  
16 leave to file Fourth Amended Complaint (*id. at 1-3*);  
17 • The extensive discovery conducted by the parties in advance of mediation  
18 (*id. at 2*);  
19 • The parties’ arms-length negotiations with third-party mediator Mark  
20 Rudy (*id.*); and  
21 • The terms of the Amended Settlement Agreement (*id. at 2-3*).

22 Plaintiff expressly re-incorporates that background into this Memorandum of Points  
23 and Authorities, and provides the Court with the following additional information  
24 relating to events that have taken place since the preliminary approval hearing on  
25 November 4, 2013.

26 **A. Notice of Settlement**

27 Pursuant to this Court’s preliminary approval order (*ECF No. 67*), the  
28 Settlement Administrator, CAC Services Group (“Settlement Administrator”),  
1

1 mailed the approved Notice of Pendency of Class Action Settlement and Final  
2 Hearing (“Notice”) and Opt Out Request for Exclusion Form (“Opt Out Form”) via  
3 first-class mail, postage prepaid. *Decl. of Nancy Johnson* (“*Settlement*  
4 *Administrator Decl.*”), ¶ 6(a). Prior to mailing the Notice and Opt Out Form, the  
5 Settlement Administrator attempted to obtain the most up-to-date address  
6 information for each Class Member by taking the measures required by Paragraph  
7 43 of the Amended Settlement Agreement. *Id.* This included (1) updating the  
8 Class Members’ mailing addresses through the USPS National Change of Address  
9 database; (2) utilizing an address verification resource to identify missing  
10 addresses; and (3) re-mailing the Notice and Opt Out Form via first-class U.S. mail,  
11 postage prepaid, to updated addresses of individuals identified on the class list  
12 when the Settlement Administrator received address change notifications from the  
13 U.S. Postal Service. *Id. at* ¶ 6(a); (c).

14 The Notice informed Class Members of the terms of the settlement,  
15 instructed them as to how they could obtain the precise terms and conditions of the  
16 settlement, and provided phone numbers to call for both Class Counsel and the  
17 Settlement Administrator if Class Members had any questions related to the  
18 settlement. *Id., Ex. 1.* In addition, the Opt Out Form was mailed to Class Members  
19 to fill out if they wished to exclude themselves from the settlement, and the Notice  
20 informed them of the procedures for, and consequences of opting out of, or  
21 objecting to the settlement. *Id., at Ex. 1, Ex. 2.*

22 **B. Response to Notice of Settlement**

23 The Class Members responded favorably to the settlement. No Class  
24 Members opted out of the settlement. *Id. at* ¶ 7. No Class Members objected to the  
25 settlement. *Id. at* ¶ 8.

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1 **III. THE COURT SHOULD GRANT FINAL SETTLEMENT APPROVAL.**

2 **A. Standard of Review**

3 Under Fed. R. Civ. P. 23(e), court approval is required for any class action  
4 settlement. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,  
5 525 (C.D. Cal. 2004). The standard for granting approval is whether the settlement  
6 is “fair, reasonable, and adequate.” *Id.*; Fed. R. Civ. P. 23(e). This determination  
7 rests within the sound discretion of the court. *Class Plaintiffs v. City of Seattle*, 955  
8 F.2d 1268, 1276 (9th Cir. 1992). However, the court begins its analysis with an  
9 “initial presumption of fairness when a proposed class settlement, which was  
10 negotiated at arm’s length by counsel for the class, is presented for court approval.”  
11 Newberg on Class Actions § 11:41 (4<sup>th</sup> ed. 2006); *accord, Maine State Ret. Sys. v.*  
12 *Countrywide Fin. Corp.*, 2:10-CV-00302 MRP, 2013 WL 6577020 (C.D. Cal. Dec.  
13 5, 2013). This is because ““there is a strong judicial policy that favors settlements,  
14 particularly where complex class action litigation is concerned.”” *Schaffer v. Litton*  
15 *Loan Servicing, LP*, CV 05-07673 MMM JCX, 2012 WL 10274679, \*7 (C.D. Cal.  
16 Nov. 13, 2012) (quoting *In re Synocor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.  
17 2008)).

18 The Ninth Circuit has stated that courts should consider several factors as  
19 part of fairness determinations, including:

20 [T]he strength of the plaintiffs’ case; the risk, expense, complexity,  
21 and likely duration of further litigation; the risk of maintaining class  
22 action status throughout the trial; the amount offered in settlement; the  
23 extent of discovery completed and the stage of the proceedings; the  
24 experience and views of counsel; the presence of a governmental  
25 participant; and the reaction of the class members to the proposed  
26 settlement.

27 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Nat'l Rural*  
28 *Telecomms. Coop.*, 221 F.R.D. at 525 (citing *Hanlon*). But the ““relative degree of  
importance to be attached to any particular factor will depend upon and be dictated

1 by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique  
2 facts and circumstances presented by each individual case.”” *Eddings v. Health*  
3 *Net, Inc.*, CV 10-1744-JST RZX, 2013 WL 3013867 (C.D. Cal. June 13, 2013)  
4 (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir.  
5 1982)).

6 Accordingly, “[n]ot all of these factors will apply to every class action  
7 settlement. Under certain circumstances, one factor alone may prove determinative  
8 in finding sufficient grounds for court approval.” *Nat'l Rural Telecomms. Coop.*,  
9 221 F.R.D. at 525 (citing *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th  
10 Cir.1993)).

11 **B. The Proposed Settlement Satisfies the Standard for Final Settlement  
12 Approval**

13 Based on the factors outlined above, the Amended Settlement Agreement is  
14 fair, reasonable, and more than adequate. Each of the relevant criteria weighs in  
15 favor of approval.

16 **1. Amount of the Settlement**

17 The proposed settlement provides significant guaranteed relief for Class  
18 Members that is appropriate for this case. Under the Amended Settlement  
19 Agreement, the minimum amount of money that could be distributed to the Class  
20 from the Settlement Fund is \$26,110.45.<sup>1</sup> The number of putative class members is  
21 53. *ECF No. 62-2, Drake Decl. to Plaintiff's Renewed Motion for Preliminary*  
22 *Approval, (“Drake Prelim. Decl.) Ex. E.* Divided *pro rata*, at a minimum, all Class  
23 Members will receive settlement awards of \$492.65. *Drake Prelim. Decl. ¶ 12.*

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27 <sup>1</sup> This number assumes the Court grants the full award of attorneys' fees and  
28 expenses allowed pursuant to the Amended Settlement Agreement.

1       The Complaint in this action seeks only statutory damages. *ECF No. 69.*  
2 Pursuant to the FCRA, the amount of statutory damages available to class members  
3 pursuant to the FCRA range between \$100 and \$1000. 15 U.S.C. § 1681n(a).

4       As detailed in Plaintiff's prior motion, the estimated per-class member  
5 payment resulting from this settlement compares extremely favorably with  
6 settlement amounts in similar cases under the FCRA. This monetary amount is  
7 particularly substantial in light of the fact that Class Members will receive these  
8 funds automatically, without having to file a claim form. *See, e.g. Hunter v. First*  
9 *Transit, Inc.*, Nos. 1:09-cv-06178 and 1:10-cv-07002 (N.D. Ill. Mar. 23, 2011)<sup>2</sup>  
10 (individuals subject to an unauthorized employment related background check and  
11 denied pre-adverse action notice estimated to receive between \$150 and \$300 each);  
12 *Marino v. The U.D. Registry, Inc.*, No. 05-cv-2268, 2006 WL 1687026 (E.D. Pa.  
13 June 14, 2006) (settlement involving \$100 per class member where defendant failed  
14 to provide free copy of consumer report). Many other FCRA settlements have  
15 provided significantly less value per class member—usually well below the \$100  
16 statutory minimum for damages, and often with class members being required to  
17 file a claim form. *See, e.g., Final Order, Domonoske v. Bank of Am., N.A.*, 5:08-  
18 CV-00066, ECF No. 155 at 5, 14-15 (W.D. Va. June 14, 2011) (settling for about  
19 \$17 per class member who files a claim); *Settlement Agreement, Ori v. Fifth Third*  
20 *Bank*, No. 2:08-CV-00432, ECF No. 217 at ¶ 9 (settling for \$55 per class member  
21 who files a claim); *Stipulation and Agreement of Settlement, LaValle v.*  
22 *Chexsystems*, No. 8:08-CV-01383, ECF No. 58 at ¶ 3.2 (C.D. Cal. Oct. 5, 2011)  
23 (settling for \$82 per class member who files a claim). Relative to other FCRA  
24 settlements, the instant Settlement secures much more value for the Settlement

25 \_\_\_\_\_  
26 <sup>2</sup> This order, along with other orders and settlement agreements cited herein that are  
27 unavailable on Westlaw, were attached as Exhibit D to the Drake Prelim. Decl.  
(*ECF No. 62-6*.)

1 Class members. *See, e.g., Settlement Agreement, Phillips v. Accredited Home*  
2 *Lenders Holding Co.,* No. 2:06-CV-00057, ECF No. 35-2 at ¶ 1.13, 5.1 (C.D. Cal.

3 July 17, 2008) (settling for \$10 per class member on claims-made basis, with fees  
4 and costs paid separately); *Final Judgment and Order of Dismissal with Prejudice,*  
5 *In re Farmers Ins. Co., Inc.*, 5:03-CV-00158, ECF No. 1011 at ¶ 6 (W.D. Ok. Sept.

6 29, 2011) (settling for \$35 per class member on claims-made basis, with fees and  
7 costs paid separately). Furthermore, unlike many FCRA settlements, here the  
8 settlement value will be distributed to the settlement Class Members through direct  
9 monetary payments, and not through the provision of coupons or other non-  
10 monetary relief. *See, e.g., Stipulation of Settlement, Anderson v. Signix, Inc.*, No.  
11 3:08-CV-00570, ECF No. 39-1 at ¶ 2.4 (settling the large majority of class  
12 members' claims for one \$52 coupon per member); *Klingensmith v. Max & Erma's*  
13 *Rests., Inc.*, No. 07-0318, 2007 WL 3118505, at \*5 (W.D. Pa. Oct. 23, 2007)  
14 (settling for two \$4 restaurant vouchers per FCRA violation); *Reibstein v. Rite Aid*  
15 *Corp.*, 761 F. Supp. 2d 241, 246 (E.D. Penn. 2011) (settling for one \$20 coupon per  
16 FCRA violation).

17 “[C]ourts must tread cautiously when comparing the amount of a settlement  
18 to speculative figures regarding what damages ‘might have been won’ had  
19 [plaintiffs] prevailed at trial.” *White*, 800 F. Supp. 2d at 1098 (quoting *Linney v.*  
20 *Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)). As previously  
21 explained, Plaintiff and Class Counsel have thoroughly evaluated the risks faced in  
22 continuing to litigate this case and believe settlement is in the best interest of the  
23 Class. The response from the Class after receiving the Court-ordered Notice further  
24 supports the Court’s decision to preliminarily approve the settlement. The amount  
25 the Class will receive is not just fair in relation to other FCRA settlements, but fair  
26 when presented to each member of the Class. The Court should therefore grant  
27 final settlement approval.

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1                   2. Strength of Plaintiff's Case and the Risk, Expense, Complexity, and  
2                   Duration of Further Litigation

3                   The strength of Plaintiff's case, and the risks, expense, and complexity  
4                   inherent in continuing this litigation, support final settlement approval. As  
5                   evidenced by the fact that not one member of the Class opted out of or objected to  
6                   the proposed settlement, this resolution offers an attractive alternative to protracted  
7                   litigation. Class Members will receive prompt and guaranteed relief rather than  
8                   face an uncertain outcome unlikely to yield equal or greater results for the Class.

9                   As explained in Plaintiff's Renewed Motion for Preliminary Settlement  
10                  Approval, the paucity of relevant case law on the specific claims Plaintiff raises  
11                  only increases the already significant risk inherent to complex litigation. Although  
12                  Plaintiff strongly believes his claims are superior to Defendant's defenses and  
13                  believes that the most analogous case law draws distinctions supportive of his  
14                  claims, the benefits of this settlement far outweigh the risks of further litigation.

15                  If this case had proceeded to trial on the merits, Plaintiff would have needed  
16                  to prove that Defendant acted willfully in violating the FCRA. Although a reckless  
17                  violation of the FCRA satisfies the willfulness requirement, *Safeco Ins. Co. of*  
18                  *America v. Burr*, 551 U.S. 47, 56–57, 127 S. Ct. 2201, 167 L.Ed. 2d 1045 (2007),  
19                  “[g]iven that Plaintiffs' claims largely presented questions of first impression,  
20                  proving willfulness in this case would have been no easy task.” *White v. Experian*  
21                  *Info. Solutions, Inc.*, 803 F. Supp. 2d 1086 (C.D. Cal. 2011). Moreover, even if  
22                  Plaintiff had proven willfulness, there is no guarantee that Plaintiff would have  
23                  achieved an award, on a per class member basis, that would have met or exceeded  
24                  the amount received through settlement of nearly \$500 per class member. As is  
25                  demonstrated by how favorably the settlement amount achieved here compares to  
26                  that in other, similar settlements, there is a distinct possibility that, even if Plaintiff  
27                  had prevailed, he would have only received the statutory minimum of \$100 per  
28                  Class Member. Moreover, such an award could have been subject to challenge on

1 appeal, prolonging the period of time it would take for Class Members to receive a  
2 payment.

3 As this Court recognized when it granted preliminary settlement approval,  
4 when the proposed settlement is weighed against the risks, expense, and complexity  
5 inherent in continuing this litigation, the decision to accept this settlement is  
6 reasonable. Because the Class agrees, final approval should now be granted.

7 3. Status of Investigation and Discovery and Stage of Proceedings

8 As detailed in Plaintiff's Renewed Motion for Preliminary Settlement  
9 Approval, the parties exchanged a significant amount of relevant informal  
10 discovery in advance of mediation. The parties exchanged mediation information  
11 requests, and also exchanged mediation briefs detailing the relevant facts and the  
12 parties' respective analysis of the strength of the claims asserted in this litigation.  
13 *Drake Prelim. Decl.* ¶¶ 3-5. Class Counsel was able to analyze the data and  
14 documents Defendant disclosed to determine the size of the proposed Class, analyze  
15 Defendant's criminal history screening process, applicant coding criteria,  
16 background adjudication process, and review Defendant's internal hiring policies  
17 and its background check service agreements with ABI/Sterling. *Id.* As a result of  
18 this process, Class Counsel was able to assess the merits of the parties' respective  
19 positions and to compromise the issues on a fair and equitable basis. The result of  
20 this assessment was the Amended Settlement Agreement that compares very  
21 favorably with other FCRA cases, this Court preliminarily approved, and for which  
22 the Class has now given its approval. This factor supports final settlement  
23 approval.

24 4. Experience and Views of Counsel

25 "The experience and views of counsel further support a finding that the  
26 settlement is fair. As courts have noted, 'the fact that experienced counsel involved  
27 in the case approved the settlement after hard-fought negotiations is entitled to  
28 considerable weight.'" *White*, 803 F. Supp. 2d at 1099 (quoting *Ellis v. Naval Air*

1 *Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980)); see also *Nat'l Rural*  
2 *Telecomms. Coop.*, 221 F.R.D. at 528 (“Great weight is accorded to the  
3 recommendation of counsel, who are most closely acquainted with the facts of the  
4 underlying litigation.”) (quotation omitted). Specifically, the court in *White* noted  
5 that counsel’s significant experience in complex class actions and FCRA litigation  
6 weighed in favor of the settlement. *Id.* Here, Class Counsel’s extensive experience  
7 in class action litigation, including matters concerning employment disputes,  
8 consumer protection, and the FCRA, weighs decidedly in favor of final approval.  
9 See *Drake Prelim. Decl. Ex. C.*

## 5. Unanimous Reaction of Class Members

11        Each individual Class Member has now had an opportunity to weigh in on  
12 the quality of the proposed settlement. And the silence speaks volumes. “It is  
13 established that the absence of a large number of objections to a proposed class  
14 action settlement raises a strong presumption that the terms of a proposed class  
15 settlement action are favorable to the class members.” *Nat'l Rural Telecomms.*  
16 *Coop.*, 221 F.R.D. at 529. Here, after being presented with Notice of the proposed  
17 settlement, not a single Class Member objected or opted out. “The absence of a  
18 single objection to the Proposed Settlement provides further support for final  
19 approval of the Proposed Settlement.” *Id*; *Multi-Ethnic Immigrant Workers Org.*  
20 *Network v. City of Los Angeles*, CV 07-3072 AHM FMMX, 2009 WL 9100391  
21 (C.D. Cal. June 24, 2009) (stating that one objection and no opt outs “is a highly  
22 favorable reaction by the class to the settlement.”). The Class recognized that the  
23 proposed settlement is fair, and that the benefit received is an excellent result. This  
24 factor strongly and indisputably weighs in favor of granting final settlement  
25 approval.

\* \* \*

In short, the parties have reached a settlement that is fair, reasonable, and adequate. It provides substantial monetary relief to the Class and has the support of the Class Members. It therefore deserves final approval.

## IV. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests the Court grant his motion for final approval of the proposed class action settlement and (1) finally approve the Amended Settlement Agreement; and (2) dismiss all of the Plaintiff's and Class Members' claims in the litigation with prejudice.

DATED: March 3, 2014

By:/s/E. Michelle Drake

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**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing document on the CM/ECF system which sent a Notice of Electronic Filing to the following:

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Dated: March 3, 2014

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E. Michelle Drake